# Routine Program Changes To Commonwealth of Virginia Coastal Management Program

#### Request for Concurrence January 9, 2006

Virginia Water Protection Permit Program Code of Virginia Title 62.1, Chapter 3.1 and 9 VAC 25-210-10 et seq.

Submitted by: The Commonwealth of Virginia

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#### INTRODUCTION

The following constitutes a request by the Commonwealth of Virginia for the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) to concur in Routine Program Changes to the Commonwealth of Virginia's Coastal Management Program (CMP).

The Commonwealth of Virginia has revised the Commonwealth's enforceable policies in Code of Virginia Title 62.1, Chapter 3.1 and 9 VAC 25-210-10 et seq., known as the Virginia Water Protection Permit Program (VWPP), relating to wetlands.

In accordance with requirements for Routine Program Changes (RPCs) as set forth in Coastal Zone Management Act (CZMA) §306(e), 15 C.F.R. §923.84, and the guidelines for Routine Program Changes contained in OCRM's Program Change Guidance from July 1996, the Commonwealth of Virginia has prepared the following analysis of the changes. The analysis: (A) explains why the proffered changes to the State CMP are Routine Program Changes and not Amendments as described in 15 C.F.R. §923.80(d); and (B) identifies the enforceable policies to be added to the management program, describes the nature of each program change, and examines the impact the changes have on the existing management program.

#### ANALYSIS OF INCORPORATION

The Commonwealth submits the changes to Code of Virginia Title 62.1, Chapter 3.1 and 9 VAC 25-210-10 et seq. as a Routine Program Change. The statute and regulations for the Water Protection Permit Program were previously added to the CMP in 1993 through a Routine Program Change (RPI Number 93-2), and this submission updates these provisions to reflect amendments since that time.

#### (A) Routine Program Change

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this analysis of the submitted change notifies OCRM of the Routine Program Change and explains why the program change will not result in an Amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of the five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries:
- (4) authorities and organization;
- (5) coordination, public involvement and national interest.

OCRM's Program Change guidance states that a substantial change is a high threshold based on a case-by-case determination. Such determination is made by reviewing indicators of substantial change, such as whether new or revised enforceable policies

address coastal uses or resources not previously managed, or make major changes in the way a state CMP manages coastal uses or resources. OCRM's Program Change guidance also states that an explanation why a proposed change will not result in an Amendment should describe the elements of the State CMP that are affected.

The submitted change to the Virginia CMP addresses the permitting of activities in wetlands under the Virginia Water Protection Permit Program, specifically providing separate authority from Federal Clean Water Act jurisdiction. Under 15 C.F.R. §923.90(d) and OCRM's Guidance, this change affects elements of the Virginia CMP's enforceable policies and permissible land and water uses within the Commonwealth's coastal zone. However, the change does not substantially change the uses subject to management, the authorities and organization of the Virginia CMP, or public involvement, and it makes no changes to special management areas, coastal zone boundaries, or coordination and national interest. The change preserves Virginia's authority over activities in state waters, including wetlands, regardless of federal authority.

As noted in the 1993 Routine Program Change, the VWPP authority both "provides a state regulatory framework for implementation of federal 401 authority [and] ... also emphasizes the interest of the General Assembly and the State Water Control Board that this authority be used to protect minimum instream flow levels and to regulate activities which may damage nontidal wetlands." With incorporation of the current submitted change, the VWPP continues to do both of these things.

#### (B) Effect of Change

The Virginia Water Protection Permit Program (Code of Virginia Title 62.1, Chapter 3.1 and 9 VAC 25-210-10 et seq.) was submitted to NOAA and was added to the approved CMP in 1993 by Routine Program Change. The VWPP served as the mechanism whereby the Department of Environmental Quality and Virginia Water Control Board could review impoundments and water withdrawals in order to protect instream flows, and the mechanism for providing the state water quality certification under Section 401 of the Federal Clean Water Act (33 U.S.C. 1341) for activities affecting both tidal and nontidal wetlands subject to permitting by the U.S. Army Corps of Engineers (USACE) under Section 404 of the Clean Water Act (33 U.S.C. 1344).

In the late 1990s, federal litigation led to concern that the USACE could lose jurisdiction over certain excavation activities in wetlands. *Nat'l Mining Assoc. v. U.S. Army Corps of Engineers*, 145 F. 3d. 1399 (D.C.Cir. 1998) (striking down USACE's 1993 *Tulloch* rule). At the same time, litigation challenging USACE jurisdiction over nontidal wetlands "isolated" from connections to navigable waters (including *United States v. Wilson*, 133 F. 3d 351 (4th Cir. 1997)) led to concern that the VWPP also might not continue to apply to activities in Virginia's nontidal wetlands. Because the VWPP applied to these activities in wetlands only to the extent to which the USACE had jurisdiction, continuity

of the program was threatened. In response, the 2000 General Assembly enacted legislation amending the VWPP Program. <sup>1</sup>

The amendments continue the VWPP as the vehicle for 401 certification, but resolve the jurisdictional issue by requiring a VWPP for (1) excavation in wetlands, and (2) other activities affecting wetlands, including nontidal wetlands (draining, filling or dumping, permanent flooding or impounding, or new activities that cause significant alteration or degradation of existing wetlands acreage or function). In sum, the amendment confirms Virginia's jurisdiction over activities and wetlands that the DEQ had been regulating prior to 2000, but removes the program's dependency on USACE jurisdiction under the federal Clean Water Act. Prior to the amendments, applicants seeking a Section 404 permit from the USACE were required to obtain a VWPP permit for the same activity to satisfy the Section 401 requirement. After the amendment the VWPP still serves as a 401 certification where the USACE has jurisdiction, but it maintains Virginia's jurisdiction where the Corps no longer has jurisdiction.<sup>2</sup>

Because the amendments are intended to confirm Virginia's jurisdiction, they add the word "wetlands" to the definition of state waters (which already included "all waters"), they define wetlands by using the express language of the USACE regulations, and they require the Commonwealth to use the USACE's 1987 wetland delineation manual. Like the federal 404 program, the VWPP, as amended, exempts normal agricultural and silvicultural activities, and provides for general permits for activities with minimal impacts and for certain activities regulated by other federal and state agencies. As amended, the VWPP provides for an opportunity for public comment, as is the case under the section 404 USACE permits. The amendments directed the State Water Control Board to adopt amended regulations to implement the statutory changes. The VWPP regulations were amended July 2, 2001.

Other provisions of the VWPP program were amended in 1996, 1999, 2000, and 2004 to expressly allow the use of wetland mitigation banks for required compensatory mitigation and to identify limitations and requirements. Wetland mitigation banks have been used for USACE permitting in Virginia since the early 1990s. *See* Envt'l. Law Inst., *Wetland Mitigation Banking* (1993)(noting operating wetland banks in Virginia in 1992).

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<sup>&</sup>lt;sup>1</sup> The history of the VWPP amendments is given in *Treacy v. Newdunn Associates*, 344 F.3d 407 (4th Cir. 2003). The amendments proved timely, as the Supreme Court's decision in *SWANCC v. United States*, 531 U.S. 159 (2001), struck down USACE jurisdiction over certain isolated nontidal wetlands.

<sup>&</sup>lt;sup>2</sup> Note that activities in tidal wetlands in Virginia are regulated by the Virginia Marine Resources Commission under another law – Chapter 13 of Title 28.2 of the Code of Virginia – also an approved part of Virginia's CMP. This jurisdiction is unchanged. A VWPP in tidal wetlands is needed only if the USACE has jurisdiction as part of the Section 401 Certification.

Virginia's enforceable policies thus affect substantially the same kinds of activities and waters as they did in 1993 when USACE jurisdiction was not in doubt.

Statutory sections affected by the changes since NOAA's 1993 approval of the VWPP as part of the CMP are identified in the attached table, updating the Virginia State Water Control Law. Affected Virginia Code sections are: 62.1-44.3 (Definitions), 62.1-44.5 (Prohibitions), 62.1-44.15 (Powers and duties of the State Water Control Board), 62.1-44.15:5 (Virginia Water Protection Permit Program), 62.1-44.15:6 (Permit fees), 62.1-44.23 (Enforcement by injunction, etc.). Section 62.1-44.15:5 relates solely to the VWPP program. The other sections include general Water Control Law provisions that relate to the VWPP program.

However, they also include authorities, definitions, and provisions relevant to other water quality programs as well as the VWPP. Rather than submit a piecemeal Routine Program Change submission that updates only the portions of these statutory sections relevant to the VWPP program, this submission updates these sections in full by providing the changes since each section was approved as part of the Virginia CMP. They include (1) some additional definitions, (2) some discharge reporting requirements and stormwater provisions required by the federal Clean Water Act and hence eligible for automatic incorporation, (3) some provisions relevant to reclamation and reuse of wastewater, and (4) permit fees applicable to permits other than the VWPP. These additional updates are separately described in the attached table, with analysis of their substantiality where they are submitted as a Routine Program Change. Several of these updates are eligible for incorporation into the CMP under Section 307(f) of the Coastal Zone Management Act, which authorizes incorporation of state requirements adopted pursuant to the federal Clean Water Act, and are identified as such.

Changes to the VWPP regulations, 9 VAC 25-210-10 et seq., are included in the table following the statutory table. The regulations were previously approved as part of Virginia's CMP in 1993. General permits were previously authorized by 9 VAC 25-210-130, approved as part of Virginia's CMP; and the regulations now include the terms for coverage under general permits, with provisions like those that would have applied under VWPP individual permits. The current submittal includes the terms of general permits adopted under the regulations, 9 VAC 25-660, -670, -680, and -690. The general permits follow an identical organizational format. The regulations are at pp. 1-9, and the general permits at 10-20 in the tables.

The attached tables provide a description and analysis of each regulatory and statutory change submitted for incorporation into the CMP. Each table identifies the enforceable policies affected, describes the nature of each program change, and examines the impact the changes have on the existing management program.

The VWPP Routine Program Changes will be inserted in Virginia's CMP Document in Chapter III of Core Regulatory Program F (Point Source Water Pollution), and will be cross-referenced at Core Regulatory Program C (Wetlands Management).

Statutory Change	Status of Law	Change to Law Since Approval	Significance of Change
§62.1-44.3.	Part of original CMP	Virginia Water Protection Permit Program:	Virginia Water Protection Permit
Definitions	approval and updated in	Amendment added "including wetlands" to the	<b>Program:</b> Not a substantial change.
	1988 as Routine Program	definition of "State waters" to clarify the	Wetlands were always encompassed within
	Change for Virginia's 401	Commonwealth's jurisdiction over these waters as part	the definition of State waters, which
	program.	of the "all water" already encompassed within the	included "all water, on the surface and
		definition. Added definitions for: "Excavate or	under the ground." The other definitions
		excavation," "Normal agricultural activities," "Normal	supplied definitions for the VWPP already
		silvicultural activities," and "Wetlands," using the	in use in the federal Clean Water Act § 404
		federal regulatory definition for wetlands at 33 CFR	program to which the VWPP had always
		328.3, and referencing federal jurisdictional	applied.
		exceptions for silvicultural and agricultural activities	
		(2000, Ch. 1032 – Wetlands, Ch. 1054 – Wetlands).	
		,	• Other Changes: Not a substantial change.
		Amended definition of "owner" to include U.S. govt.	The definitional additions and amendments
		and anyone responsible for discharge of wastes or	clarified existing jurisdiction as delegated
		pollution, and defined "person" to include any	under the federal Clean Water Act. Nor
		individual, corporation, partnership, association, a	new authorities over federal agencies as
		governmental body, a municipal corporation or any	federal government was always subject to
		other legal entity (1990, Ch. 717, 1991, Ch. 702).	Clean Water Act and to section 401
		Added definitions for "reuse," "reclaimed water," and	certification. No changes in uses, special
		"reclamation" in connection with reclamation and reuse	management areas, boundaries, authorities
		of wastewater as an alternative to discharge (2000, Ch.	or organization, or coordination, public
		972 – Reclamation and Reuse of Wastewater), and	involvement, and national interest.
		added definition for "sewage treatment works or	
		treatment works" (2003, Ch. 614 - Waters-Wastewater	
		Treatment Plants – Plans and Specifications).	

Title 62.1. Waters of the State, Ports and Harbors Chapter 3.1. State Water Control Law [Relevant Sections]

62.1-44.5.
Prohibition of waste
discharges or other
quality alterations of
state waters except
as authorized by
permit; notification
required

## Part of original CMP approval.

#### • Virginia Water Protection Permit Program:

Added prohibitions against the following, except as conducted in compliance with a certificate issued by the State Water Control Board: excavation in a wetland; new activities on or after Oct. 1, 2001 that cause draining that significantly alters or degrades existing wetland acreage or functions; filling or dumping; permanent flooding or impounding; new activities that cause significant alteration or degradation of existing wetland acreage or functions (2000, Ch. 1032 – Wetlands).

#### Other Changes (not related to VWPP):

? Discharge reporting: Added requirement that violators who cause or allow a prohibited discharge of sewage, wastes, or other noxious or deleterious substance must, upon learning of the discharge, promptly notify within 24 hours the State Water Control Board, the Director of DEQ or the coordinator of emergency services, with written notice to DEQ within the federal Clean Water Act time frame (1996, Ch. 119 - State Water Control Law – Prohibited Discharges – Reporting Requirement; 2001, Ch. 354 – Waters – Discharges into State Waters – Penalty, Ch. 383 – Waters – Discharges – Notification).

? Stormwater: Added a prohibition, except in compliance with a certificate issued by the State Water Control Board, against discharging stormwater into

#### • Virginia Water Protection Permit

Program: Represents a change, but not a substantial change in authorities. This section of the statute previously prohibited and continues to prohibit activities without a certificate that "alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters..." And the 401certification program administered by the Board using the VWPP addressed these wetland-related activities where federal jurisdiction applied.

#### Other Changes:

? This provision is automatically incorporated into the CMP under the Clean Water Act. (CZMA 307(f))

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		state waters from Municipal Separate Storm Sewer Systems or land disturbing activities unless in compliance with a permit issued pursuant to Article 1. (§10.1-603.1 et seq.) of Chapter 6 of Title 10.1 (2004, Ch. 372 – Conservation – Reorganization of Stormwater Management Programs – Penalty).  ? Technical amendments: Changed opening sentence from statement of "public policy" against unpermitted discharges to a declaration that such discharges are "unlawful," and replaced "owner" with "person" in order to include all potential violators (1990, Ch. 717).	? Not a substantial change. Such discharges were unlawful under the Virginia Water Control Law as originally approved in the CMP, and the application to "person" tracks the federal Clean Water Act 502(5). No changes in uses, special management areas, boundaries, authorities or organization, or coordination, public involvement, and national interest.
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§62.1-44.15. Powers and duties [of the State Water Control Board]	Part of original CMP approval and updated in 1988 as Routine Program Change for Virginia's 401 program.	<ul> <li>Virginia Water Protection Permit Program:</li> <li>Amended subsection (5) to authorize the Board to issue, revoke or amend certificates (viz. VWPPs) for "excavation in a wetland" and "new activities to cause draining that significantly alters or degrades existing wetland acreage or functions; filling or dumping; permanent flooding or impounding; or new activities that cause significant alteration or degradation of existing wetland acreage or functions," and subsection (5a) to provide that the term of a VWPP shall be based upon the projected duration of the project, the length of any required monitoring or other project operations or permit conditions, all of which may not exceed fifteen years (2000, Ch. 1032 – Wetlands, Ch. 1054 - Wetlands).</li> </ul>	<ul> <li>Virginia Water Protection Permit Prog.</li> <li>Represents a change but not a substantial change to authorities or uses under the CMP. The Board already had authority under 62.1-44.15:5 to issue VWPPs for these activities in wetlands subject to USACE permitting. This amendment defines the authority of the Board vis-à-vis activities in wetlands, rather than basing the Board's authority on the existence or nonexistence of USACE jurisdiction. The definition of the term of the VWPP clarifies how long the permit applies, as it does not depend upon the existence of a federal permit.</li> </ul>

Title 62.1. Waters of the State, Ports and Harbors Chapter 3.1. State Water Control Law [Relevant Sections]

- Authorized the Board to condition a certificate [viz. a Virginia Water Protection Permit operating as a Federal Clean Water Act §401 certification] relating to dredging projects governed under Chapter 12 Submerged Lands (§28.2-1200 et seq.) or Chapter 13 Tidal Wetlands (§28.2-1300 et seq.) upon a demonstration of financial responsibility for the completion of compensatory mitigation requirements, and authorizing acceptance of financial mechanism and amount required by U.S. Army Corps of Engineers (2002, Ch. 49 Waters State Water Control Board Powers and Duties, Ch. 396 Waters State Water Control Board Powers and Duties).
- Not a substantial change. Under 62.1-44.15(5) as approved in the original CMP, the Board was empowered to "issue certificates...under prescribed conditions".
   Using this authority, the Board had existing authority to condition its grant of 401certification under the VWPP for USACE-permitted projects.

#### • Other Changes to section (not related to VWPP):

- Technical Changes: Provided for specific time terms for pollution discharge elimination system permits and pollution abatement permits, and for revocation of permits (1990, Ch. 717). Provided for consideration of public health in setting standards (1991, Ch. 239). Provided for placement of agreed civil charges for past violations into the Virginia Environmental Emergency Response Fund (1991, Ch. 239, 718). Provided that Board must notify General Assembly of any proposed regulation that is more restrictive than applicable federal requirements (1993, Ch. 456).
- Reuse and Reclaimed Water: Authorized the Board to promote and establish requirements for the reclamation and reuse of wastewater as an alternative to discharge (2000, Ch. 972 Reclamation and Reuse of Wastewater).

#### Other changes:

- Not a substantial change. These are administrative provisions that address the process for rulemaking, timing, and the destination of civil penalties, and do not change uses, special management areas, boundaries, authorities or organization, or coordination, public involvement, and national interest.
- Not a substantial change. Does not change uses, special management areas, boundaries, authorities or organization, or coordination, public involvement, and national interest.

		• Stormwater Program: Added a clause requiring, on and after December 31, 2004, Department personnel who conduct inspections for compliance with stormwater management permits to hold a certificate of competence pursuant to \$10.1-561 (2004, Ch. 431 – Waters – Erosion and Sediment Control – Stormwater Management Inspectors).	• This provision is automatically incorporated into the CMP under the Clean Water Act. (CZMA 307(f))
§62.1-44.15:5 Virginia Water Protection Permit	Approved as part of the CMP in 1993 (RPI 93-2).	• Virginia Water Protection Permit Program  ◇ Amended section (A) to read: "Issuance of a Virginia Water Protection Permit shall constitute the certification required under §401 of the Clean Water Act", removing the prior condition that stated "After the effective date of regulations adopted by the Board pursuant to this section"(2000, Ch. 1032 – Wetlands, Ch. 1054 - Wetlands).	• Virginia Water Protection Permit Progr.  ? Technical update only. The regulations previously referenced were adopted in 1992 and incorporated into the CMP in 1993.
		♦ Amended section (B) to read: "The Board shall, after providing an opportunity for public comment, issue a Virginia Water Protection Permit if it has determined that the proposed activity is consistent with the provisions of the Clean Water Act and the State Water Control Law and will protect instream beneficial uses." The amendment removed the clause "for an activity requiring §401 certification" and added "and the State Water Control Law" to make clear that the Permit covers both 401 and state-regulated activities, and added the public comment provision, supplementing the consultation with interested and affected agencies in subsection (F) (2000, Ch. 1032 – Wetlands, Ch. 1054 - Wetlands).	? Does not change uses, authorities, or public involvement under the CMP. The VWPP regulations incorporated in the CMP in 1993 already provided for public comment, and the requirement for compliance with state law was expressed in both the prior regulations and statute. The 1993 Routine Program Change stated, "The VWPP Program is directly based on statutory and regulatory authority of the Commonwealth of Virginia and the federal Clean Water Act." Section 401 certification is still assured by subsection (A) above.

Title 62.1. Waters of the State, Ports and Harbors Chapter 3.1. State Water Control Law [Relevant Sections]

> ♦ Added a list of activities (subsection (D)) that are prohibited in wetlands except in compliance with an individual or general Virginia Water Protection Permit; and identified permit requirements for avoidance, minimization, compensation, and no net loss of wetland acreage and function. Specified procedural requirements for processing individual and general permit applications and time limits for the review of and determinations on completeness of applications for coverage under general permits (2000, Ch. 1032 – Wetlands, Ch. 1054 – Wetlands; 2004, Ch. 293- Waters – Protection Permit – Provisions). Authorized the Board to develop general permits, and required it to do so for activities causing wetland impacts of less than one-half acre; for facilities and activities of regulated utilities and public service companies; for coal, natural gas, and coalbed methane gas activities regulated by the Virginia Dept. of Mines, Minerals and Energy, and sand mining; for Virginia Department of Transportation or other linear transportation projects; and for activities governed by nationwide or regional permits approved by the Board and issued by the USACE. Subsection exempts activities governed under Chapter 13 of Title 28.2 (Tidal Wetlands), which remain subject to §401 review, and normal agricultural activities, normal silvicultural activities, normal residential gardening lawn and landscape maintenance. The Board is required to utilize the USACE's "Wetlands Delineation Manual, Technical Report Y-87-1, January 1987, Final Report" as the approved method for delineating wetlands (2000, Ch. 1032 – Wetlands, Ch. 1054 - Wetlands).

? Represents a change, but not a substantial change to the CMP within the OCRM Guidance and regulations. The VWPP is the same permit used for both 401 certification and for those activities in wetlands that were formerly regulated by the USACE and subject to the VWPP. The amendments require the Board to use the 1987 federal wetland delineation manual used by the USACE. They maintain the existing 401 review for tidal wetlands, track the federal exemptions for normal agriculture and silviculture, and provide for general permits along the lines of the USACE general permits.

- ♦ Added a prohibition against localities imposing wetlands permit requirements duplicating state or federal wetlands permit requirements (2000, Ch. 1032 Wetlands, Ch. 1054 Wetlands).
- ♦ Added a subsection (E) providing that, when a Virginia Water Protection Permit is conditioned upon compensatory mitigation for adverse impacts to wetlands, applicants may satisfy all or part of the mitigation requirements by the use or purchase of credits from any wetlands mitigation bank that has been approved and is operating in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use and operation of mitigation banks (1996, Ch. 736 – Wetlands – Mitigation Banking; 1999 Amendments – Ch. 8 – Wetlands Mitigation Banking - Department of Environmental Quality - Determination). Added qualifications for the use of banks not located in the same cataloging unit or adjacent cataloging unit within the same river watershed as the impacted site (1999 Amendments – Ch. 8 – Wetlands Mitigation Banking – Department of Environmental Quality – Determination). Authorizes the Department of Environmental Quality to serve as a signatory to agreements governing the operation of wetlands mitigation banks. The Commonwealth is exempted from liability for action taken under any agreement developed pursuant to such authority. State agencies are authorized to purchase credits from wetland mitigation banks (2000, Ch. 1032 – Wetlands, Ch.
- ? Not a substantial change. Virginia is a Dillon Rule" state, and hence its localities have only those powers expressly conferred by the legislature. The prohibition confirms the existing law.
- ? Not a substantial change. Virginia's wetland mitigation banking provisions closely track the system used for mitigation of USACE 404 permits in Virginia and elsewhere for more than a decade. Use of mitigation banks for permitting predates the 1993 incorporation.

		1054 - Wetlands). Defines the suitable geographic regions for the locations of wetlands mitigation banks used by applicants for a VWPP, and requires that the mitigation banking instrument include a provision for a right of entry and inspection of the property and that the mitigation bank instrument and the contract for the purchase or use of credits may be enforced in the courts of the Commonwealth (2004, Ch. 94 – Waters – Protection Permit – Wetland Mitigation Bank).	
		♦ Added an interim prohibition (subsection (I)) against excavation in a wetland without compensation to the satisfaction of the Board in a manner sufficient to achieve no net loss of existing wetland acreage and functions, during the period pending development of the regulations, absent the issuance of a §404 permit by the USACE (2000, Ch. 1032 – Wetlands, Ch. 1054 - Wetlands).	? Not a substantial change. Maintained the status quo during the period of the development of the regulations and is currently moot as the regulations were issued in July 2001.
		♦ Authorized the Board to issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal upon a finding that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety (2003, Ch. 399 – Waters – Supply – Virginia Water Protection Permit).	? Not a substantial change. Made an administrative power of the Board explicit in order to expedite responses to emergencies.
§62.1-44.15:6. Permit fee regulations.	[Enacted 1992, not previously incorporated.]	• Directed the Board to adopt regulations establishing a fee assessment and collection system to recover a portion of costs associated with the processing of most permit applications under the state water control law. Prohibited fee for a permit pertaining to a farming	• Not a substantial change. Does not change uses or authorities for management under the CMP. Virginia recovers some of its permitting costs in connection with the permits it already issues under its approved

-		operation engaged in production for market,	CMP.
			CMF.
		maintenance dredging for federal navigation channels	
		or other Corps of Engineers sponsored dredging	
		projects, or "for the regularly scheduled renewal of an	
		individual permit for an existing facility." Imposed	
		additional annual fees on facilities in a toxics	
		management program and facilities that have more	
		than five process wastewater discharge outfalls.	
		Established a ceiling on permit maintenance fees for	
		permits held by local government or public service	
		authorities with permits for multiple facilities in a	
		single jurisdiction. Authorized the Board to establish	
		criteria by regulation to provide for reductions in the	
		annual fee amount assessed for facilities accepted into	
		the Department's programs to recognize excellent	
		environmental performance. Required that permit	
		application fees charged for Virginia Water Protection	
		Permits, ground water withdrawal permits, and surface	
		water withdrawal permits reflect "the average time and	
		complexity of processing a permit in each of the	
		various categories of permits and permit actions and	
		the size of the proposed impact." (1992, Ch. 621, 657;	
		1993, Ch. 749; 1995, Ch. 107 – Water Control Law –	
		Maintenance Dredging – Permit Fees; 1997, Ch. 115 –	
		Water Program – Permit Fees Report, Ch. 154 – State	
		Water Control Law – Water Program Permit Fees –	
		Report; 2004, Ch. 249, Ch. 324 – Conservation –	
		Environme ntal – Permit Fees)	
§62.1-44.23.	Part of original CMP	• Excised the clause entitling the State Water Board to	• Not a substantial change. Does not change
Enforcement by	approval and updated in	an award of reasonable attorney's fees and costs in an	authorities or organization.
injunction, etc.	1988 as Routine Program	action brought by and won by the Board (1994, Ch.	_
	Chance for Virginia's 401	489 – State Water Control Law – Enforcement Actions	
	program.	<ul> <li>Payment of Costs and Fees).</li> </ul>	

<b>Regulatory Change</b>	Status of Law	Change to Regulation Since Approval	Significance of Change
VAC25-210-10. Definitions.	Approved as part of CMP in 1993.	• Added definition for "Excavate or Excavation" (2000); and definitions for "Aquatic resources or aquatic environment" "Avoidance" "Beneficial use" "Code" "Compensation or compensatory mitigation" Creation" "Director" "Draining" "Dredging" "Ecologically preferable" "Enhancement" "Fill" "General permit" "Geographic area of a delineated wetland" "Impairment" "In-lieu fee fund" "Isolated wetlands of minimal ecological value" "Joint Permit Application" "Law" "Minimization" "Mitigation" "Mitigation bank" "Mitigation banking" "Multi-project mitigation site" "Normal agricultural activities" "Normal residential gardening, lawn and landscape maintenance" "Normal silvicultural activities" "Permanent flooding or impounding" "Pollution" "Practicable" "Preservation" "Restoration" "Significant alteration or degradation of existing wetland acreage or function" "USACE" "VMRC" "VWP general permit" and "VWP permit." Amended definitions of "Adjacent," "Applicant," "Nationwide permit" "Permittee" "Pollutant" "Regional permit" "State waters" "Surface water." Excised the definition of "Approval authority" "Certificate" "Composite sample" "Effluent" "Environmental Protection Agency" "Executive director" "Nonpoint source" "Permit" "State general permit" (2001).	<ul> <li>Does not substantially change uses or authority subject to management under the CMP.</li> <li>The definitions clarify terms falling within Virginia's CMP authority over activities affecting state waters, and provide continuity with prior use of the VWPP for §401 certification of these activities in nontidal wetlands.</li> </ul>
VAC25-210-20 to VAC25-210-40. Repealed]	Approved as part of CMP in 1993.	• Repealed in 2001. Section 20 concerned the purpose of this chapter; section 30 concerned the authority for this chapter; and section 40 listed federal guidelines incorporated by reference. These sections have not been replaced.	Does not substantially change uses or authority subject to management under the CMP.

VAC25-210-45.	Promulgated in 2001.	Requires each delineation to be conducted in accordance	• Does not substantially change uses or
Vetland delineation.		with the USACE "Wetland Delineation Manual, Technical	authority subject to management under
		Report Y-87-1, January 1987, Final Report" (Federal	the CMP. Maintains continuity with prior
		Manual) (2001).	jurisdiction under existing VWPP.
PVAC25-210-50. Prohibitions and equirements for VWP permits.	Approved as part of CMP in 1993.	Added prohibition on excavation activities in wetlands, and on wetlands-impairing activities on or after October 1, 2001 "except in compliance with a VWP permit," supplementing the existing section's prohibition on dredge, fill, discharge or alteration of physical, chemical or biological properties of surface waters without a permit. Supplemented existing prohibition of permit where the activity does not comply with state law by also referencing state "regulations including but not limited to §10.1-1408.5 (prohibiting solid waste landfills in wetlands)," and dropped phrase "for any discharge which will result in the pollution of surface waters	• Change but not a substantial change in uses or authorities subject to management under the permit program. The prohibitions track the statutory authority over activities affecting state waters, and add references to regulations, part of the CMP.
		or the violation of standards, regulations or policies adopted	
		by the board pursuant to state law" as unnecessary (2001).	
VAC25-210-60. Exclusions.	Approved as part of CMP in 1993.	Amended the list of activities that do not require a Virginia Water Protection permit but which may require other permits under state and federal law, simplifying the list by removing illustrative examples of USACE-approved dredging activities, but requiring VWPP for discharges into wetlands. Maintained exceptions for activities permitted by a Virginia Pollutant Discharge Elimination System permit	<ul> <li>Exclusions track statutory changes and limit VWPP jurisdiction so that coverage maintains continuity with prior VWPP jurisdiction and exclusions for USACE §401 certification.</li> <li>Does not substantially change uses or</li> </ul>
		or a Virginia Pollution Abatement permit except where the activity is "in a surface water governed by §62.1-44.15:5 of the Code of Virginia" (the VWPP). Deleted exception for land disposal activities governed by a Department of Waste Management permit. Added to exceptions "any activity permitted under Chapter 13" (Va. Tidal Wetlands Law), unless state certification is required by §401 of the Clean Water act. Maintained existing exclusion for agriculture and silviculture, and added "normal residential gardening, lawn and landscape maintenance." Clarified	authority subject to management under the CMP.

VAC25-210-70. Effect of VWP Permit.	Approved as part of CMP in 1993.	that activities which bring a new area into agricultural or silvicultural use are not part of an established operation (2001).  • Compliance with a VWP permit constitutes compliance with the law and "regulations." (2001).	Does not substantially change uses or authority subject to management under the CMP.
VAC25-210-80. Application for a VWP permit.	Approved as part of CMP in 1993.	• Removed references to specific reasons for applying for VWPP, and amended the process for applying for a permit and the amount of time allowed for DEQ to process a complete VWP permit application. Added a prohibition against commencement of activity for which a VWPP is required prior to the issuance of a VWPP. Amended the informational requirements for permit, including mitigation plan.(2001).	Does not substantially change uses or authority subject to management under the CMP. Under existing CMP activity could not commence until after the VWPP was issued. Informational requirements are reorganized and details of previously required mitigation plan are specified.
OVAC25-210-90. Conditions applicable o all VWP permits.	Approved as part of CMP in 1993.	• Replaced the term "VWP holder" and with "permittee;" excised "and toxic standards" from "all applicable federal and statute statutes, regulations, and prohibitions" as unnecessary; excised the term "noncompliance" and replaced it with "violation"; excised the words "Act and" and left the word "law"; modified the word "permit" with "VWP"; inserted the words "an application for"; excised the words "renewal application" and replaced them with "extension or reissuance." (2001).	<ul> <li>Minor administrative changes. Does not substantially change uses or authority subject to management under the CMP.</li> </ul>
		• Rewrote mitigation language to require permittee to "minimize or prevent any impacts in violation of the permit which may have a reasonable likelihood of adversely affecting human health or the environment." Added requirement that if the permittee wishes to continue an activity regulated by the VWP permit after the expiration date, the permittee must apply for and obtain a new VWP permit or comply with the provisions for an extension. Authorized Board to modify, revoke and reissue, or terminate VWP permit for "noncompliance"in	<ul> <li>Does not substantially change uses or authority subject to management under the CMP. VWPP regulations already required avoidance and minimization. Additional length of permit was also obtainable under existing regulations through new application.</li> </ul>

VAC25-210-100. Signatory equirements.	Approved as part of CMP in 1993.	addition to upon request or Board initiative. Required "analysis of pollutants" to be conducted under federal "Guidelines Establishing Test Procedures for the Analysis of Pollutants" and required chain of custody (2001).  Amended the signatory requirements for the VWP permit, for reports, and for certification of application and reports (2001).	Technical change. Does not substantially change uses or authority subject to management under the CMP.
OVAC25-210-110. Establishing applicable tandards, limitations or other VWP permit conditions.	Approved as part of CMP in 1993.	• Amended fixed term for VWPP by adding the words "based upon the projected duration of the project, the length of any required monitoring, or other project operation or permit conditions; however, the term shall not exceed 15 years" replacing "not to exceed five years" (2000). Amended "includes but is not limited to" illustrative reasons for reopening VWP (2001).	Does not substantially change uses or authority subject to management under the CMP.
		• Amended the clause addressing monitoring requirements by replacing the words "All permits shall specify" with "VWP permits may include but are not limited to." Revised the monitoring requirements that may be included in a VWP permit by amending the clause to state that the frequency of reporting shall be dependent on the nature and effect of the "regulated activity" instead of the "discharge." Excised "but in no case less than once per year." Eliminated references to discretio nary monitoring requirements (2001).	<ul> <li>Does not substantially change uses or authority subject to management under the CMP. Provides discretion in specifying monitoring.</li> </ul>
VAC25-210-115. Evaluation of nitigation alternatives.	Promulgated in 2001.	• Defined the manner in which avoidance and minimization opportunities shall be evaluated; the manner in which compensatory mitigation proposals shall be evaluated; the manner in which alternative analysis shall be conducted; and the manner in which the board may approve in-lieu fee fund compensatory mitigation (2001).	• Does not substantially change uses or authority subject to management under the CMP. Existing CMP provides state authority to evaluate mitigation alternatives. Duty to mitigate was previously spelled out in 25-210-90, incorporated in CMP in 1993.
VAC25-210-120. Oraft VWP permit	Approved as part of CMP in 1993.	• Made Board tentative decision follow "after evaluation" rather than "upon receipt" (2001).	Technical change only.

ormulation.			
VAC25-210-130.  VWP general permits.	Approved as part of CMP in 1993.	• Added terms for issuing and revoking a VWP general permit, general permit duration, and the terms under which the board may certify a nationwide or regional permit proposed by USACE under §401 of the CWA as meeting conditions for a VWP general permit (2001).	• Does not substantially change uses or authority subject to management under the CMP. Section previously authorized general permits and conditions. Current general permit conditions are specified in 9 VAC 25-660 to -690.
Public notice of VWP permit action and public comment period	Approved as part of CMP in 1993.	• Specified 14-day time requirement for publication of notice of draft VWP permit. Specified that all written comments submitted during the 30-day comment period shall be retained by the board and considered during its final decision on the VWP permit (2001).	• Administrative change only. The existing regulations provided for issuance of notice, contents of notice and for public comment period. Does not substantially change public involvement.
VAC25-210-150. Public access to nformation.	Approved as part of CMP in 1993.	• Language of the exception to this rule modified by excising the phrase "unless the information has been identified by the applicant as a trade secret" and replacing it with "unless the applicant has made a showing that the information is protected by the applicant as a trade secret" (2001).	<ul> <li>Does not substantially change uses or authority or public involvement under the CMP. Applicant must justify claim of trade secret.</li> </ul>
VAC25-210-160. Public comments and learing.	Approved as part of CMP in 1993.	• Excised the requirement to provide a comment period of at least 20 days following the date of public notice of the formulation of a draft VWP. Changed the entity responsible for considering all written comments and requests from the "executive director" to "the board." Changed the term "informal hearing" to "public hearing." Added "inaction of the board" as a cause for an aggrieved applicant to request a hearing. (2001).	• This requirement is currently found in 9 VAC 25-210-140 and the 20-day comment period was changed to 30 days. Technical changes do not substantially change uses or authority or public involvement under the CMP.
VAC25-210-170. Public notice of nearing.	Approved as part of CMP in 1993.	• Modified the term "informal hearing" to "public hearing." Adds fish and wildlife resource issues to the kind of issued that can be raised by persons requesting a public hearing (2001).	Does not substantially change uses or authority subject to management under the CMP. The VWPP always provided the state with authority to consider fish and wildlife impacts.
VAC25-210-180. Rules for modification, evocation and	Approved as part of CMP in 1993.	Made minor modifications to the existing language and allows termination upon determination that the permitted activity has ceased and that the compensatory mitigation	Does not substantially change uses or authority subject to management under the CMP. Technical change.

eissuance and ermination of VWP permits.		for unavoidable adverse impacts has been successfully completed (2001).	
VAC25-210-185.  VWP permit extension.	Promulgated in 2001.	Stipulated the manner in which a permittee, with an effective VWP permit for an activity that is expected to continue after the expiration date of the permit without any change in the activity authorized by the permit, shall submit written notification requesting an extension.  Stipulates 15 years as the limit of the extension beyond the original effective date of the VWP permit (2001).	Previous VWPP regulations at 25-210- 180 allowed for renewal upon reapplication.
VAC25-210-190. Causes for nodification.	Approved as part of CMP in 1993.	• Deleted the flowing reasons for involuntary modification of a VWP permit: "When an effluent standard or prohibition for a toxic pollutant must be incorporated in the permit in accordance with provisions of §307(a) of the Act;" "When the level of discharge of a pollutant not limited in a permit exceeds the level which can be achieved by available methodology for controlling such discharges;" "When the permittee begins or expects to begin to cause the discharge of any toxic pollutant not reported in the application;" "When other states were not notified of the change in the permit and their waters may be affected by the discharge." (2001)	Does not substantially change uses or authority subject to management under the CMP. 25-210-110 provides for reopeners to allow Board to modify permits.
PVAC25-210-200.  Fransferability of VWP permits.	Approved as part of CMP in 1993.	• Changed the automatic transfer of a VWP permit to occur if the current permittee notifies the board <i>within</i> 30 days rather than 30 days "in advance" of the proposed transfer of the title to the facility or property, and allowed the transferor and transferee to agree which shall retain liability for compliance (2001).	Does not substantially change uses or authority subject to management under the CMP.
VAC25-210-210.  Vinor modification.	Approved as part of CMP in 1993.	• Amended B.2. to include "monitoring" among permissible minor modifications of VWP permits, allows Board to impose "different frequency" rather than "greater frequency," and added the phrase "based on new information justifying the change in conditions."	• Does not substantially change uses or authority subject to management under the CMP. Minor changes to process for minor modifications.

		Subsection B.3: Altered the interim compliance date in a schedule of compliance from no more than 120 days to 180 days from the original compliance date.  • Modified B.5 to allow changes "that do not result in an increase to permitted project impacts." Added Subsection B.8 for minor modification "when subsequent to issuance of a VWP individual or general permit, the permittee determines that additional wetland or stream impacts are necessary, provided that the unavoidable cumulative increase in the acreage of wetland impacts is not greater than ¼ acre and the unavoidable cumulative increase in stream impacts is less than 50 linear feet, and also provided that the additional impacts are fully mitigated at ratios not less than compensatory mitigation rations for the original impacts" (2001).	<ul> <li>CMP previously allowed minor modification for VWPP where expansion did not "cause significant change in the discharge of pollutants."</li> <li>CMP previously allowed waivers of VWPP for "minimal or no environmental consequences under 25-210-220 as incorporated in 1993.</li> </ul>
VAC25-210-220.  Waiver of VWP permit.	Approved as part of CMP in 1993.	• Revised the regulation addressing when the board may waive permitting requirements. Authorized the board to waive permitting requirements when the board determines that a proposed project impacts an isolated wetland that is of minimal ecological value and when the proposed activity for a VWP individual permit qualifies for a permit issued by the USACE and receives a permit from the VMRC, and the activity does not impact instream flows (2001).	Does not substantially change uses or authority subject to management under the CMP. Similar to previous regulation allowing waiver for "minimal environmental consequences."
OVAC25-210-230. Denial of the VWP permit.	Approved as part of CMP in 1993.	• Revised the conditions under which the board shall make a decision to tentatively deny a VWP permit. Includes, but is not limited to: violation of water quality standards or impairment of the beneficial uses of state waters; the result that shellfish waters would be condemned; proposed project fails to adequately avoid and minimize impacts to state waters to the maximum extent practicable; proposed compensatory mitigation plan is insufficient or unsatisfactory for the proposed impacts; the Department	<ul> <li>Does not substantially change uses or authority subject to management under the CMP.</li> <li>This section was formerly entirely procedural. The content provisions are similar to the standards for approving a previous VWPP under the CMP (viz. meeting state and federal water quality</li> </ul>

		of Game and Inland Fisheries indicates that natural or stockable trout waters would be permanently and negatively impacted; the proposed activity is prohibited by 9 VAC-210-50; the effect of project impacts, together with other existing or proposed impacts to wetlands, will cause or contribute to a significant impairment of state waters or fish and wildlife resources; failure to submit the required permit fee (2001).	conditions).
		• Amendment required notification of the applicant of "tentative denial" rather than of "staff recommendation" of denial. Vests the board with the capacity to deny an application and to advise the applicant of the right to a public hearing to consider the denial (2001).	Minor procedural change in terminology.     Notice and hearing existed under previous VWPP regulation incorporated in CMP.
VAC25-210-240. Enforcement.	Approved as part of CMP in 1993.	• Added reference to §10.1-1186 (general powers of the Dept. of Envtl. Quality) to the enforcement authority of the board (2001).	• Technical change. Does not substantially change uses or authority subject to management under the CMP.
VAC25-210-250. Delegation of authority.	Approved as part of CMP in 1993.	• Amendment excised the word "executive" from the officer's title, now referred to as "the director" (2001).	• Technical change. Does not substantially change uses or authority subject to management under the CMP.
VAC25-210-260. Fransition.	Approved as part of CMP in 1993.	• Amended the procedures for processing applications received from VDOT on or after August 1, 2001 or all other applications received on or after October 1, 2001 (2001).	• Technical change. Does not substantially change uses or authority subject to management under the CMP.
VAC25-220-60. Agreements.	Approved as part of CMP in 1993.	• Revised language concerning the board's approval of voluntary agreements among persons withdrawing surface water in the same surface management area by requiring that the board shall approve the agreement "following a public hearing." Replaced the clause stating that board approval of the agreement shall be conducted according to the Virginia Administrative Process Act and the board's Public Participation Guidelines with the requirement that "[t]he board shall provide at least 60 days' notice of the	Does not substantially change uses or authority or public involvement under the CMP. Minor procedural changes continue public participation and the board role.

		public hearing in general and individually to those persons withdrawing surface water in the surface water management area who are not parties to the agreement, and shall make a good faith effort to notify" interested parties. Made the board a party to the agreement. Amended Subsection D to remove the prior condition of final adoption of the agreement as a regulation. Inserted temporal qualification which now states that the agreement shall control in lieu of a formal order, rule, or regulation "until terminated." (2000).	
VAC25-220-70. Application for a permit.	Approved as part of CMP in 1993.	• Added an exemption to the requirement to have a surface water withdrawal permit for "withdrawals made pursuant to a voluntary agreement approved by the board pursuant to 9 VAC-220-60" (2000).	<ul> <li>Does not substantially change uses or authority subject to management under the CMP.</li> </ul>

#### **VWPP GENERAL PERMIT PROVISIONS**

General permits were previously authorized by 9 VAC 25-210-130, approved as part of the CMP in 1993.

CHAPTER 660 VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS LESS THAN ONE-HALF OF AN ACRE (2001). PVAC25-660-10. Definitions.	Promulgated in 2001, amended in 2005.	• Defined 23 terms, such as "bank protection," "channelization," "FEMA," "Conversion," "Permanent impacts," "Person," "Temporary impacts," "Up to 125 linear feet of perennial stream channel," "Less than one-half of an acre," "Perennial stream," and "Single and complete project" to support interpretation of this general permit.	Does not substantially change uses or authority subject to management under the CMP.
PVAC25-660-20. Purpose; delegation of authority; effective date of VWP general permit.	Promulgated in 2001, amended in 2005.	• Declared that purpose of this regulation is to establish VWP General Permit Number WP1 that governs impacts to less than one-half of an acre of nontidal surface waters, 125 linear feet of perennial stream channel, and up to 1,500 linear feet of nonperennial stream channel.	• Does not substantially change uses or authority subject to management under the CMP. General permits were previously authorized by 9 VAC 25-210-130, approved as part of the CMP in 1993. VWPP also previously recognized USACE nationwide permits.
NAC25-660-30. Authorization to impact surface waters.	Promulgated in 2001, amended in 2005.	• Permit authorizes impact to less than one-half acre of surface waters and declares that only for activities in nontidal waters. Authorizes the board, on a case-by-case basis when driven by concerns for water quality and the aquatic environment, to require individual applications and VWP individual permits rather than approving coverage under the VWP general permit. Waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9VAC25-210-10. Declares that coverage under a nationwide or regional permit promulgated by the USACE, and for which the board has issued §401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit	Does not substantially change uses or authority subject to management under the CMP, permitted under an individual or general permit. As approved in the CMP in 1993, the program VWPP previously allowed waiver for "minimal or no environmental consequence" 25-210-220.

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		unless a state programmatic general permit is approved for	
		the covered activity or impact.	
VAC25-660-40. Exceptions to coverage.	Promulgated in 2001, amended in 2005.	• Defines where authorization for coverage under the VWP general permit will not apply, including nontidal wetlands adjacent to tidal waters, 100 year floodplains, and waters with threatened or endangered species. Does not allow activities that may reasonably be expected to cause water quality violations or more than minimal changes to peak hydraulic flow, that significantly increase flooding or that cause more than minimal degradation of water quality.	<ul> <li>Does not substantially change uses or authority subject to management under the CMP. General permit is not usable in areas where VWPP individual permit would have been denied or limited under CMP.</li> </ul>
VAC25-660-50. Notification.	Promulgated in 2001, amended in 2005.	<ul> <li>Stipulated the requirements for notification to the board prior to construction, and stipulates that the board will determine whether the proposed activity requires</li> </ul>	<ul> <li>Does not substantially change uses or authority subject to management under the CMP.</li> </ul>
		coordination with other federal and/or state agencies.	
VAC25-660-60. Application.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements for the filing of applications with the board prior to commencement of activity and set out the time requirements for the board to review and approve applications.	• Does not substantially change uses or authority subject to management under the CMP.
VAC25-660-70. Compensation.	Promulgated in 2001, amended in 2005.	Addressed the manner in which the board will consider the purchase or use of mitigation bank credits or a contribution to an in-lieu fee fund; and defines the standards for compensation for impacts.	• Does not substantially change uses or authority subject to management under the CMP. The VWPP previously provided for mitigation decisions by the Board under 25-210-90 as approved in CMP in 1993.
VAC25-660-80. Notice of planned hanges.	Promulgated in 2001, amended in 2005.	• Stipulated the conditions under which authorization under this VWP general permit may be modified subsequent to issuance subject to Board review including changes to approved mitigation bank.	• Does not substantially change uses or authority subject to management under the CMP.
PVAC25-660-90.  Fermination of authorization by consent.	Promulgated in 2001, amended in 2005.	• Stipulated the manner in which the permittee shall submit a notice of termination upon completion of all permitted activities requiring notification under 9VAC25-660-50 A 1, and allows termination by consent.	Does not substantially change uses or authority subject to management under the CMP.
VAC25-660-100. VWP general permit.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements placed upon any applicant whose application has been accepted by the board for a	Does not substantially change uses or authority subject to management under

		VWP General Permit No. WP1	the CMP. Provides detailed standard terms and conditions comparable to those under individual VWPP.
CHAPTER 670  VIRGINIA WATER PROTECTION GENERAL PERMIT FOR FACILITIES AND ACTIVITIES OF JTILITY AND PUBLIC SERVICE COMPANIES REGULATED BY THE FEDERAL ENERGY REGULATORY COMMISSION OR THE STATE CORPORATION COMMISSION AND DTHER UTILITY LINE ACTIVITIES PVAC25-670-10. Definitions.	Promulgated in 2001, amended in 2005.	Defined 24 terms such as "bank protection,"     "channelization," "FEMA," and "conversion," to support interpretation of this general permit.	Does not substantially change uses or authority subject to management under the CMP.
PVAC25-670-20. Purpose; delegation of authority; effective date of VWP general permit.	Promulgated in 2001, amended in 2005.	• Purpose of this regulation is to establish VWP General Permit Number WP2 to govern impacts related to the construction and maintenance of utility lines. Stated that this VWP general permit regulation will become effective on October 1, 2001 and will expire on October 1, 2006.	• Does not substantially change uses or authority subject to management under the CMP. General permits were previously authorized by 9 VAC 25-210-130, approved as part of the CMP in 1993. VWPP also previously recognized USACE nationwide permits.
OVAC25-670-30. Authorization to impact surface waters.	Promulgated in 2001, amended in 2005.	• Permit authorizes impact up to one acre of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial	Does not substantially change uses or authority subject to management under the CMP, permitted under an individual

		stream channel for facilities and activities of utilities and public service companies regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and other utility line activities. Authorized the board, on a case-by-case basis when driven by concerns for water quality and the aquatic environment, to require individual applications and VWP individual permits rather than approving coverage under the VWP	or general permit. As approved in the CMP in 1993, the program VWPP previously allowed waiver for "minimal or no environmental consequence" 25-210-220.
		general permit. Waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9VAC25-210-10. Coverage under a nationwide or regional permit promulgated by the U.S. Army Corps of Engineers (USACE), and for which the board has issued §401 certification existing as of October 1, 2001, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.	
VAC25-670-40. exceptions to coverage.	Promulgated in 2001, amended in 2005.	• Stipulated where authorization for coverage under this VWP general permit will not apply, including certain wetlands, threatened and endangered species areas, and prohibits activities that may reasonably be expected to cause water quality violations or more than minimal changes to peak hydraulic flow, that significantly increase flooding or that cause more than minimal degradation of water quality.	Does not substantially change uses or authority subject to management under the CMP. General permit is not usable in areas where VWPP individual permit would have been denied or limited under CMP.
VAC25-670-50. Notification.	Promulgated in 2001, amended in 2005.	• Stated that notification to the board is not required for utility line activities that have only temporary impacts provided they do not involve mechanized land clearing of forested wetlands. Stipulates the manner in which required notification to the board will be given prior to construction. The board will determine whether the proposed activity requires coordination with other federal and state agencies regarding the presence of any federal or	Does not substantially change uses or authority subject to management under the CMP.

		state proposed or listed threatened and endangered species or proposed or designated critical habitat.	
VAC25-670-60. Application.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements for the filing of applications with the board prior to commencement of activity and set out the time requirements for the board to review and approve applications.	Does not substantially change uses or authority subject to management under the CMP.
VAC25-670-70. Compensation.	Promulgated in 2001, amended in 2005.	• Described the types of compensation that the board may accept for unavoidable impacts. Stipulated the compensation to impact ratios that will be applied. Stated that the use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the statutory and regulatory requirements, and the applicant provides verification to the board of purchase or debiting of the required amount of credits.	• Does not substantially change uses or authority subject to management under the CMP. The VWPP previously provided for mitigation decisions by the Board under 25-210-90 as approved in the CMP in 1993
VAC25-670-80. Notice of planned shanges.	Promulgated in 2001, amended in 2005.	• Stated that authorization under VWP General Permit WP2 may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is not great than 50 linear feet, and provided that the additional impacts are fully mitigated, and subject to Board review.	Does not substantially change uses or authority subject to management under the CMP.
VAC25-670-90. Fermination.	Promulgated in 2001, amended in 2005.	Described the process for submission of a notice of termination by an applicant upon completion of all permitted activities requiring notification.	• Does not substantially change uses or authority subject to management under the CMP.
VAC25-670-100.  VWP general permit.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements placed upon an applicant whose application has been accepted by the board for a VWP General Permit No. WP2.	Does not substantially change uses or authority subject to management under the CMP. Provides detailed standard terms and conditions comparable to those under individual VWPP.
CHAPTER 680 VIRGINIA WATER PROTECTION	Promulgated in 2001, amended in 2005.	• Defined 28 terms such as "bank protection," "channelization," "linear transportation project" and "conversion" to support interpretation of this general	• Does not substantially change uses or authority subject to management under the CMP.

GENERAL PERMIT FOR LINEAR FRANSPORTATION PROJECTS OVAC25-680-10. Definitions.		permit.	
PVAC25-680-20. Purpose; delegation of authority; effective date of VWP general permit.	Promulgated in 2001, amended in 2005.	• Stated that the purpose of this regulation is to establish VWP General Permit Number WP3 to govern impacts related to the construction and maintenance of Virginia Department of Transportation (VDOT) or other linear transportation projects. Stated that this VWP general permit regulation will become effective on October 1, 2001 and will expire on October 1, 2006 (2001), except for VDOT projects when the dates will run from Aug. 1, 2001 to Aug. 1, 2006.	Does not substantially change uses or authority subject to management under the CMP. General permits were previously authorized by 9 VAC 25-210- 130, approved as part of the CMP in 1993. VWPP also previously recognized USACE nationwide permits.
NAC25-680-30. Authorization to impact surface waters.	Promulgated in 2001, amended in 2005.	• Permit authorizes impact up to two acres of nontidal surface waters including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, for linear transportation projects, with provisos including that dredging shall not exceed 5,000 cu. yds. Authorized the board, on a case-by-case basis when driven by concerns for water quality and the aquatic environment, to require individual applications and VWP individual permits rather than approving coverage under the VWP general permit. Waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9VAC25-210-10. Coverage under a nationwide or regional permit promulgated by the USACE, and for which the board has issued §401 certification existing as of the effective date of this regulation, shall constitute coverage under this VWP general permit unless a state programmatic general permit is approved for the covered activity or impact.	Does not substantially change uses or authority subject to management under the CMP, permitted under an individual or general permit. As approved in the CMP in 1993, the program VWPP previously allowed waiver for "minimal or no environmental consequence" 25-210-220.

OVAC25-680-40. Exceptions to coverage.	Promulgated in 2001, amended in 2005.	• Stipulated where authorization for coverage under this VWP general permit will not apply, including certain wetlands, threatened and endangered species areas. Prohibits activities that may reasonably be expected to cause water quality violations or more than minimal changes to peak hydraulic flow, that significantly increase flooding or that cause more than minimal degradation of water quality.	Does not substantially change uses or authority subject to management under the CMP. General permit is not usable in areas where VWPP individual permit would have been denied or limited under CMP.
VAC25-680-50. Notification.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements for notification to the board prior to construction. The board will determine whether the proposed activity requires coordination with federal and/or state agencies regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.	<ul> <li>Does not substantially change uses or authority subject to management under the CMP.</li> </ul>
VAC25-680-60. Application.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements for the filing of applications with the board prior to commencement of activity and set out the time requirements for the board to review and approve applications. An application serves as a notice of intent for coverage under a VWP General Permit WP3.	<ul> <li>Does not substantially change uses or authority subject to management under the CMP.</li> </ul>
VAC25-680-70. Compensation.	Promulgated in 2001, amended in 2005.	• Described the types of compensation that the board may accept for unavoidable impacts. Stipulated the compensation to impact ratios that will be applied. Stated that the use of mitigation banks for compensating project impacts shall be deemed appropriate if the bank is operating in accordance with the statutory and regulatory requirements, and the applicant provides verification to the board of purchase or debiting of the required amount of credits.	• Does not substantially change uses or authority subject to management under the CMP. The VWPP previously provided for mitigation decisions by the Board under 25-210-90 as approved in the CMP in 1993.
VAC25-680-80. Notice of planned changes.	Promulgated in 2001, amended in 2005.	• Stated that authorization under a VWP General Permit WP3 may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, provided that the cumulative increase in acreage of wetland impacts is not greater than 1/4 acre and the cumulative increase in stream impacts is	Does not substantially change uses or authority subject to management under the CMP.

		not greater than 50 linear feet, and provided that the additional impacts are fully mitigated, and subject to Board review. Established a prohibition against modification of the authorization to exceed the general permit threshold for use.	
PVAC25-680-90.  Fermination of authorization by consent.	Promulgated in 2001, amended in 2005.	Described the process for submission of a notice of termination by an applicant upon completion of all permitted activities requiring notification.	• Does not substantially change uses or authority subject to management under the CMP.
VAC25-680-100. VWP general permit.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements placed upon an applicant whose application has been accepted by the board for a VWP General Permit No. WP3.	Does not substantially change uses or authority subject to management under the CMP. Provides detailed standard terms and conditions comparable to those under individual VWPP.

VIRGINIA WATER PROTECTION GENERAL PERMIT FOR IMPACTS FROM DEVELOPMENT AND CERTAIN MINING ACTIVITIES PVAC25-690-10. Definitions.	Promulgated in 2001, amended in 2005.	Defines 30 terms such as "bank protection,"     "channelization," "FEMA," "utility line," and     "Conversion" to support interpretation of this general permit.	Does not substantially change uses or authority subject to management under the CMP.
Purpose; delegation of authority; effective date of VWP general permit.	Promulgated in 2001, amended in 2005.	• Defined the purpose of the regulation as to establish VWP General Permit Number WP4 to govern impacts related to the construction and maintenance of development activities and activities directly associated with aggregate mining, hard rock/mineral mining, and surface coal, natural gas, and coalbed methane gas mining, as authorized by the Virginia Department of Mines, Minerals and Energy. Stated that this VWP general permit regulation will become effective on October 1, 2001 and will expire on October 1, 2006.	Does not substantially change uses or authority subject to management under the CMP. General permits were previously authorized by 9 VAC 25-210- 130, approved as part of the CMP in 1993. VWPP also previously recognized USACE nationwide permits.
NAC25-690-30. Authorization to impact surface waters.	Promulgated in 2001, amended in 2005.	• Authorizes limited impacts to nontidal surface waters to up to two acres including up to 500 linear feet of perennial stream channel and up to 1,500 linear feet of nonperennial stream channel, with dredging not to exceed 5,000 cubic yds., and compensatory mitigation for unavoidable impacts is required. Authorized the board, on a case-by-case basis when driven by concerns for water quality and the aquatic environment, to require individual applications and VWP individual permits rather than approving coverage under the VWP general permit. Waives the requirement for coverage under a VWP general permit for activities that occur in an isolated wetland of minimal ecological value as defined in 9VAC25-210-10. Stated	<ul> <li>Does not substantially change uses or authority subject to management under the CMP, permitted under an individual or general permit.</li> <li>As approved in the CMP in 1993, the program VWPP previously allowed waiver for "minimal or no environmental consequence" 25-210-220.</li> </ul>

		that coverage under a nationwide or regional permit promulgated by the USACE and for which the board has issued §401 certification existing as of October 1, 2001 shall constitute coverage under the VWP general permit unless a state programmatic general permit is approved for the covered activity or impact; and coverage under a permit issued by the Department of Mines, Minerals and Energy under the Virginia Coal Surface Mining Control and Reclamation Act also constitutes coverage under this VWP general permit.	Not a substantial change. Coal mining permit already covered by USACE nationwide permit.
VAC25-690-40. Exceptions to coverage.	Promulgated in 2001, amended in 2005.	• Defines where authorization for coverage under this VWP general permit will not apply, including certain wetlands, threatened and endangered species areas. Prohibits activities that may reasonably be expected to cause water quality violations or more than minimal changes to peak hydraulic flow, that significantly increase flooding or that cause more than minimal degradation of water quality.	Does not substantially change uses or authority subject to management under the CMP. General permit is not usable in areas where VWPP individual permit would have been denied or limited under CMP.
VAC25-690-50. Notification.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements for notification to the board prior to construction. The board will determine whether the proposed activity requires coordination with federal and/or state agencies regarding the presence of any federal or state proposed or listed threatened and endangered species or proposed or designated critical habitat.	Does not substantially change uses or authority subject to management under the CMP.
VAC25-690-60. Application.	Promulgated in 2001, amended in 2005.	• Stipulated the requirements for the filing of applications with the board prior to commencement of activity and set out the time requirements for the board to review and approve applications.	Does not substantially change uses or authority subject to management under the CMP.
VAC25-690-70. Compensation.	Promulgated in 2001, amended in 2005.	• Addressed the manner of compensation that the board may accept for unavoidable impacts and the manner in which compensatory mitigation for unavoidable wetland impacts shall be calculated.	• Does not substantially change uses or authority subject to management under the CMP. The VWPP previously provided for mitigation decisions by the Board under 25-210-90 as approved in CMP in 1993.
VAC25-690-80.	Promulgated in 2001,	• Stipulated the manner in which authorization under the	• Does not substantially change uses or

Notice of planned changes.	amended in 2005.	VWP general permit may be modified subsequent to issuance if the permittee determines that additional wetland and stream impacts are necessary, subject to Board review. Established a prohibition against modification of the authorization to exceed the general permit threshold for use.	authority subject to management under the CMP.
PVAC25-690-90.  Fermination of authorization by consent.	Promulgated in 2001, amended in 2005.	• Stipulated the manner in which the permittee shall submit a notice of termination upon completion of all permitted activities requiring notification under 9VAC25-690-50.	• Does not substantially change uses or authority subject to management under the CMP.
VAC25-690-100.  VWP general permit.	Promulgated in 2001, amended in 2005.	Stipulated the requirements placed upon an applicant whose application has been accepted by the board for a VWP General Permit No. WP4.	Does not substantially change uses or authority subject to management under the CMP. Provides detailed standard terms and conditions comparable to those under individual VWPP.